

Litigants in Person: is there a role for Higher Education?

Paul McKeown and Sarah Morse

Northumbria University

Introduction

The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) does not require any introduction to most, if not all readers. As of 1 April 2013, many areas of law were taken out of scope of legal aid meaning it was more difficult for individuals to obtain public funding in relation to legal disputes.

There is no statistical data available demonstrating the direct effects of LASPO on the number of litigants in person (LiPs) within the court system. Further, it would be difficult to collect accurate data on overall effects as it is assumed many individuals may not commence legal proceedings due to the unavailability of advice and representation at the outset of the case. Conversely, some individuals may commence proceedings which they would not have done had they received advice. However, the consensus is that the number of LiPs within the court system has significantly increased.

There are a number of areas where the increasing number of LiPs has had an impact on the court system. Whilst there will be LiPs who are competent to represent themselves, the research indicates that LiPs will experience problems including understanding evidential requirements, difficulties with forms and identifying the facts relevant to their case.¹ As a consequence, there is also an impact on other parties and the court. Examples of these include the challenges faced by court staff and judges in dealing with cases effectively but without giving advice or the appearance of bias and representatives doing extra work to compensate for the lack of representation on the other side.²

The Ministry of Justice, recognising the problems faced by LiPs and the consequential problems faced by the court system, announced that they will provide £2 million to increase

¹ Kim Williams, 'Litigants in person: a literature review', June 2011, p.5, Available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217374/litigants-in-person-literature-review.pdf (accessed 1 December 2014)

² *ibid*

the level of court-based support to LiPs. It is anticipated that this support will enable LiPs to access practical support and information as well providing a route to free or affordable legal advice. The money will be divided amongst a number of organisations providing support to litigants including the Personal Support Unit (PSU), LawWorks, Law for Life and the RCJ Advice Bureau.³

Court-based advice and support is therefore at the forefront of efforts to address the problems raised by LiPs. This is also recognised in the number of court-based schemes being set up across England and Wales to provide assistance. The Personal Support Unit and RCJ Advice are arguably the most well-known of these schemes. However, other schemes have also been established by the legal profession and universities. This article will consider whether universities can, and perhaps more importantly should, play a role in supporting LiPs.

Assisting LiPs in England and Wales

LiPs are not a new phenomenon within the legal system of England and Wales. RCJ Advice Bureau was established in 1978 at the Royal Courts of Justice (RCJ) to help LiPs navigate the court system and comply with the civil procedure rules. Free legal advice and assistance is provided by qualified solicitors on the procedural aspects of the case, applications to the court and referrals to a free representation service.

The PSU was subsequently established in 2001 at the RCJ, and have extended their service to other courts, to help people facing civil court proceedings without legal representation. The assistance provided by the PSU can vary from practical help with tasks, such as filling in forms, to the emotional and moral support of being accompanied in hearings. It should be

³ Ministry of Justice, 'More support for separating couples and parents', 23 October 2014, Available online at <https://www.gov.uk/government/news/more-support-for-separating-couples-and-parents> (accessed 1 December 2014)

noted that the PSU does not provide legal advice or act on the individual's behalf in proceedings.

The Civil Justice Council published a report in November 2011 on 'Access to Justice for Litigants in Person (or self-represented litigants)'. The report addressed what steps could be taken to improve access to justice for LiPs and how to prepare for an increasing number.⁴ The report made a series of recommendations considering the range of people and organisations involved in the legal system and the assistance they could offer. This included the judiciary, court staff, lawyers, advice agencies and McKenzie friends. The report also noted the assistance that could be provided by law students.

Law school participation in assisting individuals within the legal system is nothing new. A survey by LawWorks states that at least 70% of all law schools are now involved in pro bono and/or clinical activity.⁵ There are a range of activities included within this but it includes public legal education programmes, advice only clinics and full representation clinics. It is apparent from the survey results that many law schools are actively involved in assisting individuals with legal advice and/or representation already.

However, recent years have seen a rise in the number of court-based schemes purporting to assist LiPs.

CLOCK (Community Legal Outreach Collaboration Keele) was publicly launched by Keele University in October 2012. By working with a number of partner organisations, law students provide help and support to disadvantaged communities through legal research,

⁴ Civil Justice Council, 'Access to Justice for Litigants in Person (or self-represented litigants)', November 2011, p.7, Available online at <http://www.judiciary.gov.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf> (accessed 1 December 2014)

⁵ Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly, and Rebecca Parker, 'The LawWorks Law School Pro Bono and Clinic Report 2014, p.4, Available online at http://lawworks.org.uk/tmp_downloads/p58p66w88h64r17i34g138g116d58n45o54n134g25r32w89/1014-033-lawworks-student-pro-bono-report-web.pdf (accessed 1 December 2014)

policy work and community legal education.⁶ A particular aspect of the scheme to note is the Community Legal Companions where law students are trained to provide unrepresented litigants with practical assistance throughout the legal process such as filling in applications, sorting through paperwork and taking notes in proceedings.⁷

Sheffield Hallam University has established a helpdesk at Sheffield Combined Court to provide advice and assistance to LiPs in small claims matters.⁸ Northumbria University is working in partnership with the PSU and has established a service at Newcastle Combined Court to assist litigants in civil and family proceedings.⁹ Whilst the PSU have recruited student volunteers for a number of years, it is understood that this is the first time they have worked in partnership with a university to establish a service, including a memorandum of understanding and funding.

It is noted that the practical assistance provided by students under each of the schemes outlined above is limited. There is a potential danger in providing incomplete or generalised information. However students, and possibly qualified lawyers, would find it difficult to provide detailed legal advice at the court and often immediately before hearing. Nevertheless, they are providing valuable emotional and moral support to LiPs, and potentially identifying cases where further advice and assistance would be available, such as those who are still eligible for legal aid.

Perspectives from Australia and the USA

⁶ Keele University, 'Community Legal Outreach Collaboration Keele (CLOCK) Time for Justice' Available online at <http://www.keele.ac.uk/law/legaloutreachcollaboration/> (accessed 1 December 2014)

⁷ Keele University, 'The Community Legal Companion Assisting Access to Justice', Available online at <http://www.keele.ac.uk/law/legaloutreachcollaboration/communitylegalcompanion/> (accessed 1 December 2014)

⁸ Sheffield Hallam University, 'Students helping with court help desk' 10 November 2014, Available online at <http://www.shu.ac.uk/mediacentre/students-helping-court-helpdesk> (accessed 1 December 2014)

⁹ Solicitors Journal, 'News in brief: week beginning 7 July 2014', Available online at <http://www.solicitorsjournal.com/news/management/business-development/news-brief-week-beginning-7-july-2014> (accessed 1 December 2014)

The rising number of LiPs is not something which is unique to the UK. Other jurisdictions, notably Australia and the USA, have experienced similar issues for many years and have sought solutions including the development of court-based advice and support initiatives to alleviate the issues identified above.

In Australia, notable initiatives include the self-representation services which have been established to provide assistance to LiPs. In 2007 the Queensland Public Interest Law Clearing House Incorporated introduced such a service assisting litigants initially in the Queensland Supreme Court, District Court and Court of Appeal. This was later extended to the Queensland Civil and Administrative Tribunal and latterly the Federal Court and Federal Circuit Court¹⁰. Such is the strength of this scheme that it has been replicated in other states, notably in 2014 when Justice Connect received four years of Federal funding to offer such a service to litigants in the Federal Court and Federal Circuit Court in NSW, Victoria, Tasmania and the Australia Capital Territory (initially to assist in bankruptcy proceedings only with the aim of expanding assistance to fair work proceedings)¹¹.

Modelled on RCJ Advice¹² these services are designed to provide direct, task based assistance to LiPs such as help in preparing court documentation, providing advice in relation to court procedure and advice regarding the legal issues of the particular case. The assistance offered may consist of a one-off appointment or multiple appointments for those unable to afford private legal representation but in all cases the LiP retains conduct and control of their case. Like the PSU above, the service does not purport to provide full representation or for the advisor to act as the lawyer ‘on record’ but instead aims to support and assist a litigant to

¹⁰ QPILCH, ‘Self Representation Service’, Available online at <http://www.qpilch.org.au/cms/details.asp?ID=564> (accessed 1 December 2014)

¹¹ Justice Connect, ‘Self Representation Service’, Available online at <http://www.justiceconnect.org.au/get-help/referral-service/self-representation-service> (accessed 1 December 2014)

¹² Tony Woodyatt, Allira Thompson and Elizabeth Pendlebury, *Queensland’s self-representation services: A model for other courts and tribunals* (2011) 20 *Journal of Judicial Administration* 225- 239, p.225

more efficiently pursue their case themselves. However unlike the PSU, the service offered includes the provision of legal advice which is provided either by legally qualified staff employed directly by the service or, more often, by lawyers from supporting legal firms who volunteer their time towards providing this type of pro bono service.

It would appear that there is currently no formal involvement of universities within the self-representation services offered. It is arguable however that they could play a valuable role which would serve to further the education of law students as well as contributing to the much sought after assistance being provided to litigants.

This has been demonstrated in the USA where various models of pro se clinics or self-help initiatives have been established to provide assistance to LiPs often in conjunction with Law Schools. The services offered by these clinics can be simply educational and seek to provide more generalised and less case specific information to LiPs for example about court procedure (such as how to instigate or serve court proceedings) or guidance on how to complete court forms. This information might be distributed via information leaflets, group presentations, workshops or video/audio recordings. Whilst helpful, there are obvious limitations to providing generic information alone and it is noted that many courts already offer such a self-help service.

Other initiatives combine providing instructional and informational materials with offering more direct assistance to individuals similar to the self-representation services established in Australia. This can be seen in the self-help centers established in the Californian courts. Of particular note is the development of the JusticeCorps programme which trains 250 undergraduates and recent graduates each year to assist with the work conducted in these centers. Their role is similar to that of the PSU volunteers as well as including vital access to language assistance. First launched in Los Angeles County in 2004 this initiative was

extended to San Francisco Bay Area in 2006 and San Diego in 2007.¹³ This model was noted by the Civil Justice Council for its ambition, litigant satisfaction and that the “personal and professional development of the students was marked”.¹⁴

Should universities be involved?

It has been argued in some quarters that the provision of pro bono work is ‘replacing legal aid by the back door and giving the government a get-out-of-jail card.’¹⁵ Therefore that any scheme purporting to assist LiPs is merely absolving the government of its responsibilities. Whilst there would be little, if any, argument that the panacea would be a state funded legal aid system ensuring all were represented, the reality is that we will not see such a system, at least in the foreseeable future. Whilst the effects of LASPO have highlighted the issues experienced by LiPs, these are not new problems as there have always been LiPs within the legal system. On this basis, we should therefore consider whether schemes assisting LiPs are worthwhile. If not, why would any organisation, including universities, invest valuable resources into such schemes.

Trinder et al highlighted four areas for intervention, where LiPs felt their case would have been assisted. These areas are more information about the court process and procedural information; practical help, particularly with paperwork; emotional/moral support; and tailored legal advice.¹⁶

¹³ California Courts The Judicial Branch of California, ‘About JusticeCorps’, Available online at <http://www.courts.ca.gov/justicecorps-about.htm> (accessed 1 December 2014)

¹⁴ *supra* n.4, p.56

¹⁵ John Hyde, ‘Is it time to refuse pro bono work?’, Law Society Gazette, 24 October 2014, Available online at <http://www.lawgazette.co.uk/analysis/comment-and-opinion/is-it-time-to-refuse-pro-bono-work/5044648.fullarticle> (accessed 1 December 2014)

¹⁶ Liz Trinder, Rosmary Hunter, Emma Hitchings, Joanna Miles, Richard Moorhead, Leanne Smith, Mark Sefton, Victoria Hinchly, Kay Bader and Julie Pearce, ‘Litigants in Person in private family law cases’, 27 November 2014, pp.84-86, Available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380479/litigants-in-person-in-private-family-law-cases.pdf (accessed 1 December 2014)

It appears that students can play an important role in assisting LiPs through court-based schemes. Whilst there is a limit on the legal advice students may be able to provide, Trinder et al state that the ‘informal support from a friend, family member, a volunteer helper or McKenzie Friend was seen as invaluable.’¹⁷ These findings appear largely consistent with the findings of Williams in her literature review. In particular, Williams reports that users of services such as court-based advice services, self-help and hotlines reported high levels of satisfaction.¹⁸ However, Williams further notes that most evidence indicated that the case outcomes were adversely affected by the lack of representation.¹⁹

The available literature indicates that there is a role for court-based schemes in assisting LiPs as there is general consensus that LiPs do benefit from the emotional and moral support they receive. It is therefore necessary to assess whether universities should be providing this service.

For students, becoming involved in a court-based advice scheme can be extremely rewarding. It is noted above that this type of activity can aid professional development and we would suggest that this is achieved by exposing students to the court environment and to individuals with real legal issues. To provide assistance students must understand court procedure and practice as well as communicating with litigants effectively. This requires knowledge, understanding and problem solving skills. Students will encounter ethical issues and obtain insight into legal remedies and restrictions.

Some of the schemes we have referred to provide valuable assistance to litigants but do not sanction students providing legal advice. It is arguable that, in the absence of this, the

¹⁷ Ibid, p.85

¹⁸ Supra n.1, p.7

¹⁹ Ibid, p.6

activity does not fully reflect legal practice and therefore has more limited benefit. If this is the case, it is nonetheless undeniable that many skills can be advanced by the experience.

Few would also dispute that lawyers have a duty to promote access to justice and it is suggested that engagement in such an activity whilst at university can only help to instil this public service ethos at an early stage.

There can also be a more tangible and personal reward for students who take part. For example, many clinical programmes are credit bearing whereas others can result in a financial award, such as JusticeCorps where volunteers completing the programme will receive an education award.²⁰ Not to be underestimated is also the personal satisfaction of making a difference to an individual.

In the current climate, opportunities such as this can only enhance employability. Students will gain valuable first-hand experience of the court environment as well as the opportunity to improve their soft skills by engaging with real clients.

There are also several incentives for universities to become involved in these types of initiatives. In England and Wales, the Legal Education and Training Review²¹ signals an increasing drive by regulators for legal education to include training in relation to practice based skills. In our experience this is matched by student enthusiasm to engage in clinical activities and, in a competitive market, it is important that universities offer courses and extra curricula activities, which are appealing and relevant to prospective students. Indeed clinical legal education, in some form, is progressively becoming a more regular component of undergraduate legal studies in the UK.

²⁰ supra n.13

²¹ J. Webb, J. Ching, P. Maharg and A. Sherr, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales', June 2013, Available online at <http://www.lettr.org.uk/wp-content/uploads/LETR-Report.pdf> (accessed 1 December 2014)

That said, this type of activity can be expensive to resource and can be high risk. This is no more so than an in-house clinic model which often requires physical office space, administration, high levels of student supervision and indemnity insurance to name a few. However, the schemes outlined above offer students the opportunity to engage in an alternative model of clinical activity which is potentially less resource intensive (physical space and supervision often being provided by the court or service although the latter will depend upon whether student participation is credit bearing) and which carries a lower risk (as many do not involve the student directly providing legal advice or doing so under the supervision of a qualified lawyer). As such they may increase the capacity for universities to undertake clinical work.

It is equally important that universities actively engage and sustain the communities in which they play a vital role. These types of initiatives provide much needed support and assistance to members of that community as well as encouraging collaboration with other legal professionals, practices and the courts.

Conclusions

The provision of court-based advice schemes is not a replacement for a fully funded legal aid scheme. However, they do provide a valuable service to LiPs particularly in relation to the emotional and moral support they provide. Volunteers can also assist LiPs with their paperwork and thus assist in court proceedings running more smoothly. A significant limitation of many schemes is the lack of legal advice although students may identify cases where legal advice and representation may be available from another source. Universities can play a role in supporting such schemes. These schemes provide students with valuable learning opportunities whilst offering universities a valuable community engagement opportunity.